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April 14, 1999

K. David Waddell  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

In Re: BellSouth Telecommunications, Inc.'s Entry into Long Distance Interlata Service  
in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996  
Docket No. 97-00309

Dear David:


Enclosed please find the original plus thirteen (13) copies of the Southeastern  
Competitive Carriers Association and Sprint Communications Company, L.P.'s Comments  
Regarding BellSouth's Notice of Voluntary Dismissal Without Prejudice and Withdrawal of  
Advance Notice Section 271 Filing in the above-referenced docket.

Copies have been served on all parties of record.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

  
Henry Walker

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**In re:           BellSouth's Entry into Long Distance (InterLATA) Service in Tennessee  
Pursuant to Section 271 of the Telecommunications Act of 1996**

**Docket No. 97-00309**

**COMMENTS OF THE SOUTHEASTERN COMPETITIVE CARRIERS  
ASSOCIATION AND SPRINT COMMUNICATIONS COMPANY L.P.  
REGARDING BELL SOUTH'S NOTICE OF VOLUNTARY DISMISSAL WITHOUT  
PREJUDICE AND WITHDRAWAL OF ADVANCE NOTICE OF SECTION 271 FILING**

The Southeastern Competitive Carriers Association ("SECCA") together with Sprint Communications Company L.P. ("Sprint") file these comments in response to the Tennessee Regulatory Authority's (the "Authority") Notice of April 9, 1999 indicating that interested parties should file, by April 14, 1999, any comments they have regarding BellSouth Telecommunications, Inc.'s ("BellSouth") Notice of Voluntary Dismissal Without Prejudice and Withdrawal of Advance Notice Section 271 Filing.

Both SECCA and Sprint have taken the position throughout these proceedings that BellSouth's filing was premature and that BellSouth has not demonstrated that it should be permitted to offer in-region long distance service yet. In BellSouth's Notice of Voluntary Dismissal, BellSouth finally acknowledges that it has not made its case. While it is up to the Authority to do what it wishes regarding the record established in this docket, SECCA and Sprint would like to take this opportunity to urge the Authority to revise its procedures for subsequent petitions by BellSouth.

In BellSouth's Notice, BellSouth notes that it recognizes its obligations under the April 18, 1997 Report and Recommendation of the Hearing Officer. These obligations are listed as:

1. providing the Authority with at least ninety (90) days' advance notice before filing an application with the FCC for interLATA authority in Tennessee;
2. contemporaneously with such advance notice, furnishing the Authority and the parties in this proceeding with the evidence that BellSouth will rely upon at the FCC to support such an application;
3. filing with the Authority a copy of the Section 271 application to be filed with the FCC no later than thirty-five (35) days after BellSouth provides the Authority with the requisite advance notice of its intent to file with the FCC; and
4. Acting in good faith to update its Section 271 application and supporting documentation with respect to any changes, revisions, or additions.

Given BellSouth's withdrawal of its pending petition, the Authority now has an excellent opportunity to revisit this procedure. BellSouth has interpreted this procedure to mean that it can (and, indeed, must) update the record with new information at any stage in the Authority's consideration of its petition. In practical terms, this has resulted in BellSouth filing lengthy and substantive new information even after its original filing has been heard (and briefed) by all parties. In the future, such post-hearing filings should not be permitted by the Authority's procedures.

Due process requires that evidence not be gathered outside of the hearing process. Without the benefit of cross-examination and rebuttal evidence, the Authority will not have the information it needs to make a fair and informed decision. Failure to require that all evidence be presented through live witnesses and subject to cross-examination invites continual post-hearing filings that make the evidentiary record a continually moving target.

In a Section 271 filing such as this one, BellSouth should file all evidence upon which it intends to rely when it first files its 90 day advance notice petition with the Authority. BellSouth

should, of course, also be permitted to file rebuttal testimony. When the hearing is over, the Authority should consider the record in the matter closed. This permits orderly briefing and ensures that all evidence has been properly tested by the hearing process.

As the Authority is aware, BellSouth bears the burden of proof in a 271 application. *Ameritech Michigan Order* ¶43.<sup>1</sup> Also, BellSouth controls the timing of its filing with the FCC. Similarly, BellSouth is responsible for ensuring the record's completeness. The Authority cannot fulfill its responsibilities under Section 271(d)(2)(B) of the Act unless it has a complete and accurate record before it with sufficient time for review.

The FCC requires that a 271 filing be complete at the time it is filed with that agency. *Application of Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan*, CC Docket 97-137, Memorandum Opinion and Order, FCC 97-137 at 54,55 (rel. Aug. 19, 1997) (*Ameritech Michigan Order*). As the FCC concluded,

We therefore expect that, when a BOC files its application, it is already in full compliance with the requirements of section 271 and submits it application as sufficient factual evidence to demonstrate such compliance. Evidence demonstrating that a BOC *intends to come into compliance* with the requirements of section 271 by day 90 is insufficient. If, after the date of filing, the BOC concludes that additional information is necessary, or additional actions must be taken, in order to demonstrate compliance with the requirements of section 271, then the BOC's application is premature and should be withdrawn. *Ameritech Michigan Order* ¶55.

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<sup>1</sup>*Application of Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan*, CC Docket 97-137, Memorandum Opinion and Order, FCC 97-137 at 43 (rel. Aug. 19, 1997) ("*Ameritech Michigan Order*").

Third, we find that during the 90-day review period, the Commission has neither the time nor the resources to evaluate a record that is constantly evolving. *Ameritech Michigan Order* ¶54.

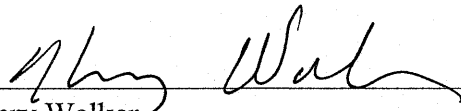
SECCA and Sprint submit that the Authority require no less from BellSouth than the FCC requires. The Authority, like the FCC, cannot properly evaluate BellSouth's compliance with Section 271 unless the Authority has a complete record before it .

Therefore, SECCA and Sprint ask that the Authority adopt a rule patterned after the FCC's requirement that, "when a BOC files its application, it is already in full compliance with the requirements of section 271" and, if the company later decides that additional evidence for compliance is necessary, the application "should be withdrawn."

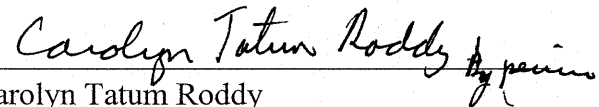
Because the Authority has a hearing process, unlike the FCC, and because intervenor testimony, rebuttal testimony and evidence that comes out during the hearing should all be considered part of the Authority's record, the Authority should consider amending its procedure to make clear that no additional filings may be made after the hearing concludes. Such a requirement will facilitate the Authority's ability to fulfill its consultative role to the FCC under Section 271(d)(2)(B) .

SECCA and Sprint thank the Authority for its consideration of this request.

Respectfully submitted,

  
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## CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing has been hand delivered or mailed to the following persons on this the 14th day of April, 1999:

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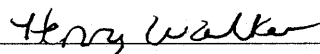
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